



## Lane Plating Superfund Site City of Dallas Surrounding Property Access Agreement

Property Owner:  
City of Dallas  
1500 Marilla Street  
Dallas, Texas 75201

EPA:  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202

Description of Property: Real property owned by the City of Dallas that is part of or near to the Lane Plating Works, Inc. facility or the Lane Plating Superfund Site located at 5322 Bonnie View Road, Dallas, Dallas County, Texas (the "Property"). (Property as further identified in Exhibit "A") attached hereto and incorporated for all purposes set forth herein.

This Surrounding Property Access Agreement ("Agreement") is effective as of October 15, 2018 and shall terminate on October 14, 2019. The City of Dallas (hereinafter referred to as "City"), does hereby grant permission to the U.S. Environmental Protection Agency, Region 6 ("EPA") to enter upon the Property, for the limited purpose of the following environmental testing:

- (i) Installation and sampling of ground water monitoring wells;
- (ii) Sampling of existing ground water monitoring wells;
- (iii) Collection of any other physical data, including but not limited to soil, water and air samples, both surface and subsurface, as necessary;
- (iv) Other actions related to the surface or subsurface investigation;
- (v) Transportation of equipment onto and about the Property as needed to accomplish the above activities.

((i), (ii), (iii) (iv) and (v) collectively referred to as the "Work")

EPA shall ensure that the Work will be accomplished in a good and workmanlike manner by qualified and properly licensed personnel, under the direction of EPA. ↓

The right of EPA and its contractors to enter onto and use the Property, pursuant to the terms of this Agreement, shall begin on October 15, 2018, the Date of Entry, and shall terminate on October 14,

**Commented [PE1]:** Limiting the work to the investigative activities is fine for now, as long as the City acknowledges that EPA may need to request access for response activities at a later date

**Deleted:** EPA will further ensure and that the affected areas of the Property will be left in a neat and presentable condition on a daily basis and upon completion restored to its prior condition as provided hereinbelow. It is also understood that the Work will be done at no cost to the City of Dallas.

2019. EPA shall ensure that the Work is performed between the hours of 8:00 a.m. and 5:00 p.m. on the dates agreed upon, unless otherwise agreed to by the City in advance and with prior notice.

**Commented [PE4]:** Let's discuss

EPA agrees to locate properly any utility service components on the Property prior to conducting any part of the Work that could impact those utility components. Furthermore, the parties recognize that this Agreement only grants access for the purpose of the performance of the Work pursuant to all of the terms and conditions of this Agreement, and this Agreement does not grant any additional authority, permit, approval, right or privilege under the Dallas City Charter or Code, or pursuant to local, state, or federal law.

**Deleted:** EPA accepts full responsibility to ensure any contractor performing the Work secures any permits, approvals, other authorizations required in order to perform the Work, including but not limited to permits under Chapter 27 of the Texas Water Code relating to Underground Injection Wells.

**Deleted:** also

**Commented [PE6]:** I'm concerned this limits EPA's authority under CERCLA. Let's discuss

EPA agrees to require its contractor to implement and comply with all aspects of an appropriate Health and Safety Plan ("HASP") for the duration of the Work at the Property. The City shall have the right to receive a copy of the HASP from EPA or EPA's contractor(s) at any time.

**Deleted:** EPA shall not allow any lien or claim of lien to be made against or affixed to City's property by reason of the project. ¶

**Deleted:** EPA accepts full responsibility for the health and wellbeing of any workers performing or otherwise associated with the Work. EPA will require its contractor to make arrangements to accept full responsibility for the health and wellbeing of any workers performing or otherwise associated with the Work.

EPA shall cause its agents and contractors to obtain general public liability insurance covering personal injury, death, or property damage occurring upon, in or about the Property described on Exhibit A, and naming the City as additional insured under such policy. The City shall be entitled to copies of insurance certificates at any time to determine in its sole discretion whether insurance coverage of any contractor and its subcontractors meets the requirements of the City's Office of Risk Management and is otherwise acceptable to the City.

**Deleted:** TO THE EXTENT ALLOWED BY LAW, EPA FURTHER AGREES TO INDEMNIFY, RELEASE, AND HOLD THE CITY HARMLESS FROM ANY DAMAGES, CLAIMS, VIOLATIONS, OR ANY OTHER POTENTIAL LOSSES ASSOCIATED WITH THE SAFETY AND WELLBEING OF ANY WORKERS EMPLOYED, CONTRACTED OR SUBCONTRACTED BY EPA OR EPA'S CONTRACTORS AT THE PROPERTY

Also, it is the responsibility of EPA, its representatives, agents and contractors to comply with all tree ordinances and other ordinances that may affect the natural environment at the Work sites on the Property. In the event this Agreement is terminated or expires for any reason, or upon completion of the Work, EPA shall remove, or cause the removal, of all construction debris, equipment, materials and spoils and restore any incomplete work or unimproved areas covered by this Agreement or impacted by the Work to its original condition existing before the Work (unless otherwise directed by City).

**Deleted:** EPA's contractors (and its officers, employees, agents, or representatives, to the extent allowed by law), by entering upon the Property and Work site locations, agree to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage, or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by EPA or the contractor's breach of any of the conditions of this Agreement, or by any negligent act or omission of EPA, its officers, employees, agents, or representatives, or the contractor, its officers, agents, employees, or subcontractors, in the performance of the Work activities described above; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of EPA, its contractors, and City, responsibility and indemnity, if any, shall be apportioned in accordance with the law of the State of Texas, without waiving any governmental immunity available to City or EPA under federal or Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties and are not intended to create or grant any rights, contractual or otherwise, to or in favor of any other person or entity.

EPA will coordinate its activities through the following point of contact: person, email, cell. A City of Dallas employee shall be allowed to accompany EPA personnel or contractors while on the Property.

**Deleted:** ¶

Upon completion of the Work, any data or reports related to sampling activities on the Property made available to the City.

**Commented [PE10]:** See note above regarding CERCLA 121(e)(1)

*EPA acknowledges and agrees that this Agreement shall not be construed as a grant of an easement for any permanent improvements themselves; an easement must be subsequently granted by the City Council for any permanent improvements. If an easement is granted, this Agreement shall automatically terminate without necessity of notice.*

**Commented [AB11]:** OEQ, who do you all want listed as you point of contact?

**Commented [PE12]:** Should not be necessary if we are limiting the Work to investigatory activities-let's discuss

Signature Page Follows



EXECUTED as of this, the \_\_\_\_ day of \_\_\_\_\_ 2018, by City, signing by and through its City Manager, duly authorized to execute same by Administrative Action No. \_\_\_\_-\_\_\_\_ on \_\_\_\_\_, 2018, and by Consultant, acting through its duly authorized officials.

APPROVED AS TO FORM:  
CHRISTOPHER J. CASO  
Interim City Attorney

CITY OF DALLAS  
T. C. BROADNAX  
City Manager

BY \_\_\_\_\_  
Assistant City Attorney

BY \_\_\_\_\_  
Assistant City Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_